

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**WINDING CREEK COOP.**  
**Lyon County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2011-AFO-15

TO: Farmers Elevator Company, Registered Agent  
Winding Creek Coop.  
1219 Main  
Rock Valley, Iowa 51247

Dana Wilson, Facility Contact  
Winding Creek Coop.  
Farmers Elevator Company  
PO Box 310  
Inwood, Iowa 51240

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Winding Creek Coop. (Winding Creek) for the purpose of resolving issues regarding Winding Creek Coop's failure to use a certified commercial manure service to transport manure. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Cindy Martens, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall – 1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Height, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Winding Creek is a confinement hog facility with 2,600 gestation hogs and 800 grow to finish hogs for a total animal unit capacity of 1,360. The facility is located at 1696 Buchanan Avenue; Larchwood, Iowa 51241 (SW 1/4 of Section 12, Centennial Township, Lyon County). Kevin DeWeerd was hired as an independent driver to haul manure in Winding Creek's semi tanker from the facility to the application site.

2. On November 4, 2010, Cindy Martens, environmental specialist senior for DNR Field Office 3, conducted a routine manure applicator check in Section 8, Logan Township, Lyon County, Iowa. Koch Farms Custom Hauling was land applying manure from the Winding Creek facility to the field. Koch Farms Custom Hauling and its applicator were properly certified. Kevin DeWeerd was driving the semi tanker from the facility to the application field. Mr. DeWeerd was not certified as a commercial manure service representative.

3. On February 2, 2011, DNR issued Notice of Violation letters to Mr. DeWeerd and Winding Creek Coop for transporting manure without proper certification. DNR informed both parties that the matter was being referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.3(6) requires that a confinement feeding operation that is required to submit a manure management plan must use a certified manure service for land application of manure. Mr. DeWeerd was not properly certified to be transporting the manure. The above-facts indicate a violation of this provision.

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3. 567 IAC 65.1 defines a commercial manure service as a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee. Mr. DeWeerd was not properly certified to be transporting manure for Winding Creek.

**V. ORDER**

THEREFORE, the DNR orders and Winding Creek agrees to do the following:

1. Winding Creek shall require all applicators, handlers, and transporters be properly certified; and
2. Winding Creek shall pay an administrative penalty of \$1,500.00, within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” It is unlikely that Winding Creek gained an economic benefit in failing to ensure that Mr. DeWeerd was properly certified; therefore no economic benefit is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations

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administratively at this time, as the most equitable and efficient means of resolving the matter. The manure certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Winding Creek's failure to ensure that its hauler was properly certified threatens the integrity of the regulatory program. Therefore, \$750.00 is assessed for this factor.

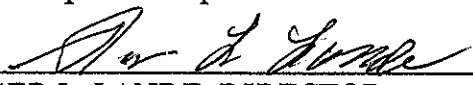
Culpability - Winding Creek have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, \$750.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Winding Creek. For that reason Winding Creek waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 20th day of  
June, 2011.

  
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Winding Creek Coop.

Dated this 7 day of  
June, 2011.

Kelli Book, Cindy Martens - Field Office 3, EPA, VIII.D.4